against the defendant, and vague, indefinite threats in general are not admissible. *Henson* v. *State*, 120 Ala. 316, 25 So. 23; *Carr* v. *State*, 23 Neb. 749. To rebut this evidence, the prosecution may offer testimony of the deceased's peaceful plan. *State* v. *Chaffin*, 56 S. C. 431, 33 S. E. 454.

HUSBAND AND WIFE — RIGHTS OF WIFE AGAINST HUSBAND AND HIS PROPERTY — WIFE'S RIGHT TO SUE HER HUSBAND FOR TORTS — ASSAULT. — The plaintiff sues her husband for having infected her with venereal disease during marital intercourse. *Held*, that she may recover. *Crowell* v. *Crowell*, 105 S. E. 206 (N. C.).

At common law the wife could not have maintained this action. See STEWART, HUSBAND AND WIFE, § 48. It was at first held that the statutes separating the personalities of the husband and wife in no way altered the inhibition. *Thompson* v. *Thompson*, 218 U. S. 611. See 11 HARV. L. REV. 479; 24 HARV. L. REV. 403; SALMOND, LAW OF TORTS, 5 ed., 76; COOLEY, LAW OF TORTS, 2 ed., 268. But the modern tendency has been, by liberal construction of such statutes, to permit her to sue for her husband's personal tort to her. See 28 HARV. L. REV. 109. The principal case agrees with this sounder tendency. See *Thompson* v. *Thompson*, 218 U. S. 611, 619 (dissent of Harlan, Holmes, and Hughes, JJ.); *Fitzpatrick* v. *Owens*, 124 Ark. 167, 186 S. W. 832, 187 S. W. 460; *Johnson* v. *Johnson*, 201 Ala. 41, 77 So. 335; *contra*, *Schultz* v. *Christopher*, 65 Wash. 496, 118 Pac. 629. Granting the wife her right to sue, has the husband a valid defense in the consent implied from the marital relation? The court barely considered this fundamental question. Consent is a recognized defense to an action for assault. *Reg.* v. *Wollaston*, 12 Cox C. C. 180. Where a syphilitic man had intercourse with a girl ignorant of his disease, it was held that her consent was vitiated by his deceiving her. *Reg.* v. *Bennett*, 4 F. & F. 1105; *Reg.* v. *Sinclair*, 13 Cox C. C. 28. But it is not a question of fraud, for there is in these cases no consent. The married woman consents to the battery incident to connubial intercourse, but in no wise to contact with virus, an alien element to which her mind never adverted. See J. H. Beale, "Consent in Criminal Law," 8 HARV. L. REV. 317, 319. It is a relief to observe that the erroneous and disgraceful doctrine of *Reg.* v. *Clarence* has not gained place in this country. See *Reg.* v. *Clarence*, 16 Cox C. C. 511. See 76 JOUR. AM. MED. ASSOC. 249.

ILLEGAL CONTRACTS — CONTRACTS AGAINST PUBLIC POLICY — "KNOCK OUT" AGREEMENT NOT TO BID AT GOVERNMENT AUCTION. — The plaintiff and defendant met each other at an auction of Government stores. To avoid competition they agreed that the defendant alone should bid, and, if he secured the goods, they would share the transaction. The goods were knocked down to the defendant, who refused to account to the plaintiff. *Held*, that the contract was valid. *Rawlings* v. *General Trading Co.*, 151 L. T. 4 (C. A.).

It seems settled in England that a "knock out" contract is enforceable. *Galton* v. *Emuss*, 1 Coll. 243; *In re Carew's Estate*, 26 Beav. 187; *Heffer* v. *Martyn*, 36 L. J. Ch. 372. This is only qualifiedly so in America. See *Gibbs* v. *Smith*, 115 Mass. 592, 593; see 3 WILLISTON, CONTRACTS, § 1663. Where the purpose of the contract is that the parties together secure property, all of which neither wishes for himself, the contract is valid. *Marie* v. *Garrison*, 83 N. Y. 14; *Kearney* v. *Taylor*, 15 How. 494. On the other hand, where, as in the principal case, the object is to prevent competition and reduce the price, the contract is void. *Devine* v. *Harkness*, 117 Ill. 145, 7 N. E. 52; *Boyle* v. *Adams*, 50 Minn. 255, 52 N. W. 860. The agreement is regarded not only as against public policy, but also as fraudulent. See *Smith* v. *Greenlee*, 13 N. C. 126, 128; see *Dudley* v. *Little*, 2 Oh. 504, 505. It might still be argued that the plaintiff should recover on analogy to the doctrine permitting an action by a

principal against an agent who holds the proceeds of an executed unlawful enterprise. See *Baldwin* v. *Potter*, 46 Vt. 402; *Yale Jewelry Co.* v. *Joyner*, 159 N. C. 644, 75 S. E. 993. Where the contract is actually fraudulent, these cases are open to question. See 3 WILLISTON, CONTRACTS, § 1786. At any rate, the principle has never been extended to partnerships. *McMullen* v. *Hoffman*, 174 U. S. 639; *Hunter* v. *Pfeiffer*, 108 Ind. 197, 9 N. E. 124. Moreover, the public policy invalidating the contract would lose all force as a deterrent unless it also prevented a recovery of profits, since from the nature of the agreement that is the only way in which either party would ever want it enforced.

JUDGMENTS — EQUITABLE RELIEF — PERJURY A GROUND FOR INJUNCTION. — The defendant obtained a judgment in a state court by testifying falsely and by feigning paralysis alleged to have resulted from injuries. The plaintiff, discovering the fraud and perjury, requested the state courts to vacate the judgment, but they declined on procedural grounds. The plaintiff now petitions the federal court to enjoin the enforcement of the judgment. *Held*, that an injunction will be granted. *Chicago, R. I. & P. Ry. Co.* v. *Callicotte*, 267 Fed. 799.

Federal and state courts of equity will enjoin the enforcement of a domestic or foreign judgment obtained by fraud, in a matter not before the court. For example, such a situation arises when a defendant has failed to assert his defense because of the assurance of the plaintiff that the latter would not prosecute the suit until he notified the defendant. *Pearce* v. *Olney*, 20 Conn. 544; see HIGH, INJUNCTIONS, 4 ed., § 191. The defendant has not had his day in court. But courts generally deny injunctive relief when the fraud of the plaintiff either consists in perjured testimony at the trial or relates to issues fully argued on their merits. *Steen* v. *March*, 132 Cal. 616, 64 Pac. 994; *Maryland Steel Co.* v. *Marney*, 91 Md. 360, 46 Atl. 1077. In support of their position these courts urge that a re-examination of these issues would result in endless litigation. Furthermore, the defendant has had a day in court. These are valid reasons why equity should proceed with greater hesitation and deliberation. But once the fraud or perjury is clearly established, injunctive relief should follow no less than in the other cases of misrepresentation by the plaintiff. Of course, the defendant must show that he exercised diligence and that he has a sufficient defense on the merits. *Spokane Co-operative Mining Co.* v. *Pearson*, 28 Wash. 118, 68 Pac. 165; *Village of Celina* v. *Eastport Savings Bank*, 68 Fed. 401; *Ableman* v. *Roth*, 12 Wis. 81; *Davis* v. *Overseer*, 40 N. J. Eq. 156. The principal case represents the minority but sound view.

MINES AND MINERALS — EASEMENTS — RIGHT OF PURCHASER OF COAL TO USE UNDERGROUND HAULWAYS FOR REMOVING COAL FROM OTHER LAND. — The defendant purchased all the coal under plaintiff's land, with the right to mine and remove the same. After removing part of this coal, he used the underground haulways under plaintiff's land to haul out coal from other land. The plaintiff seeks to have this practice enjoined. *Held*, that the injunction be granted. *Clayborn* v. *Camilla Red Ash Coal Co.*, 105 S. E. 117 (Va.).

A grant of minerals gives to the grantee an easement in the grantor's land for all purposes reasonably incident to their removal. *Marvin* v. *Brewster Iron Mining Co.*, 55 N. Y. 538; *Northcut* v. *Church*, 135 Tenn. 541, 188 S. W. 220. An easement must be restricted to the use for which it is granted. *Valley Falls Co.* v. *Dolan*, 9 R. I. 489; *Crabtree Coal Min. Co.* v. *Hamby's Adm'r.*, 28 Ky. L. 687, 90 S. W. 226. See 2 WASHBURN, REAL PROP., 6 ed., § 1268. Consequently if the grantee gets nothing more than such an easement he can be restrained from using the underground passages for the removal of other coal. But according to many decisions the purchaser of coal acquires not only an ease-